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DEC 05 2007

OFFICE OF PETITIONS

In re Application of
George M. Huggins
Application No.: 10/781483
Filing or 371(c) Date: 02/17/2004
Attorney Docket Number: HUG107

DECISION ON
PETITION

This is a decision in response to the Petition to Accord Filing Date, filed August 29, 2007. The petition is properly treated under 37 CFR 1.181.

This Petition is hereby **dismissed**.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed October 20, 2004. The Office action set a three (3) month period for reply. Extensions of time were available under 37 CFR 1.136(a). No response having been received, the application became abandoned on January 11, 2005. A Notice of Abandonment was mailed June 2, 2005.

The August 10, 2005 petition

Applicant filed a petition to revive the application under 37 CFR 1.137(b) on August 10, 2005, wherein Applicant asserted that the Office action appeared to have been based upon the parent application, of which the above-identified application is a Continuation-in-Part ("CIP"). Applicant noted correctly that the Examiner's October 20, 2004 Office action objected to drawings "because the new drawings alluded to in papers filed on February 17, 2004 are not in the file." Office action at p.2. Applicant asserted, *inter alia*, that "a new set of drawings accompanied the CIP application filed February 17, 2004." Applicant noted further comments in the October 20, 2004 Office action that appeared to have been based upon the parent application filing, and not of the above-identified CIP. Applicant filed papers with the August 10, 2005 petition that Applicant asserted were filed in this Office on February 17, 2004.

Applicant requested revival of the application and examination ab initio of the claim contained in the CIP application, putatively filed February 17, 2004. Applicant alternatively requested alternatively the granting of the petition and an opportunity to file a Request for Continued Examination (“RCE”).

The present petition

Applicant files the present petition in response to the Decision, requesting the application papers identified on the return-receipt postcard be accorded a filing date of February 17, 2004.

Applicable Law, Rules and MPEP

37 CFR 1.181(f) states

The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

Analysis

Applicant filed the present application papers on February 21, 2004. A Filing Receipt was mailed July 30, 2004, noting the filing date and receipt of three (3) drawings and one (1) claim. The Filing receipt advised Applicant to “Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination’s Filing Receipt Corrections, facsimile number 703-746-9195.”

Also filed with the application on February 21, 2004 was a petition to make the application special under the accelerated examination procedure set forth in MPEP 708.02, section IV: Applicant’s Age. The petition was granted in a Decision mailed August 16, 2004. Shortly thereafter, on October 20, 2004, this Office mailed a non-final Office action. The application became abandoned for failure to timely reply to the Office action on December 21, 2005. A Notice of Abandonment was mailed June 2, 2005. Thereafter, on August 10, 2005, more than eight months after the mailing of the Office action, and more than a year after the mailing of the Filing Receipt, Applicant filed a petition to revive the application, wherein applicant noted that the Office action appeared to have been based upon the prior application, and not the CIP application filed February 17, 2004. The petition was dismissed in a Decision mailed February 6, 2006. More than 14 months after the Decision dismissing the Petition was mailed to Applicant, advising Applicant to file a petition to accord the application papers a filing date, and more than three years after the mailing of a Filing Receipt, Applicant files the present petition to accord the application papers a filing date.

In this instance the action complained of – failing to accord the CIP application papers a filing date – occurred more than a year after Applicant received Notice from this Office as to the

application papers filed on February 17, 2004. The present petition was filed more than three years after the mailing of the Filing receipt and more than a year after Applicant was advised to file the petition. Applicant has failed to file a timely petition. The petition is dismissed. The application remains abandoned.

Further correspondence with respect to this matter should be addressed as follows:

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By FAX: (571) 273-8300
Attn: Office of Petitions

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Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

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